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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of the Local Competition	)	
Provisions in the Telecommunications	)	CC Docket No. 96-98
Act of 1996	)	
	)	

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FEDERAL COMMUNICATIONS COMMISSION
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COMMENTS OF CITIZENS UTILITIES COMPANY ON THE
INTERCONNECTION NOTICE OF PROPOSED RULEMAKING

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May 16, 1996

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SUMMARY OF COMMENTS

The Citizens Companies support a procompetitive policy of opening local exchange markets, including those in which they provide local exchange services, to usher in robust competition. In crafting the interconnection rules that are vital to opening local exchange areas to competition, the Commission must be mindful that: (1) the states are in the best position to know local conditions in their areas, which suggests that the FCC focus on providing principle-driven guidelines rather than preemptive, "one size fits all" interconnection rules; and (2) proper resolution of universal service issues is vital to wide-spread implementation of the full Section 251(c) interconnection standards in rural telephone company service areas.

An appropriate rule governing the technical feasibility of both interconnection and unbundled network elements by an incumbent LEC should embody the following principles:

(1) an incumbent LEC's past or present provision of interconnection to any other carrier at a particular network point will be deemed technically feasible and must be provided to any other carrier requesting interconnection at that point; and

(2) when any other incumbent LEC uses network technology similar to that of an incumbent LEC in (1), above, it is presumed that interconnection is technically feasible at network points comparable to those where interconnection is, or has been, provided by an incumbent LEC in (1), above.

The new statute does not preclude a carrier from purchasing cost-based unbundled elements and assembling them into a whole in order to "resell" the services of an incumbent LEC. Logically, if a competitor can underprice an incumbent through exclusive use of its own network, through use

through use of its network as supplemented by incumbent network elements or wholly through use of incumbent network elements, the result will be identical -- driving incumbent retail pricing toward cost.

Subject to its proposed standard of technical feasibility, the Citizens Companies believe that the minimum level of required network unbundling should include: (i) 2 and 4 wire local loops, as a whole, and 2 and 4 wire loop distribution facilities, loop concentration plant, and loop feeder plant; (ii) building riser cable owned or controlled by the incumbent LEC; (iii) tandem and end office switching; (iv) dedicated and common transport links; (v) operator services, including busy line verification and interrupt; (vi) 911/E-911 facilities and services, including selective call routing; (vii) access to databases, including directory assistance, 911/E-911, LIDB and CMDS; (viii) directory listings in incumbent LEC-affiliate directories; and (ix) signaling links, signal transfer points and service control points.

The Citizens Companies recommend that TSLRIC operate as the first of two fundamental elements in structuring rates for interconnection and unbundled elements, *i.e.*, as a price floor. As a going business concern, the incumbent LEC should be allowed to price all of its services, including interconnection and network elements, in order to recover some reasonable portion of its shared and common expenses. Because the issue of allocation of shared and common costs is inherently subjective, the FCC's guidance to the states in this regard should be general in nature, establishing, at a minimum, that a reasonable allocation of shared and common costs is a permissible second element in arbitrating interconnection and network element pricing issues.

While Section 251(g) is clearly intended to preserve the current access regime until it is affirmatively changed, it is also clear that the Section 251 interconnection principles and Section 252 interconnection pricing principles will serve to undermine the present access structure. For this reason, it is imperative that the Commission address access charge reform in the very near future.

Section 252(d)(1)'s provisions governing pricing of interconnection and network elements are conceptually different, and should be viewed independently, from Section 252(d)(2)'s provisions governing pricing of the transport and termination of traffic The call transport and termination function that is the subject of the Section 251(b)(5) reciprocal compensation requirement is for the transport and delivery of traffic received from an originating carrier. For call transport and termination purposes, the party that controls the transport facility on its side of the physical interconnection/meet point should be compensated for its use in the termination of another carrier's traffic, even if network elements secured from an incumbent LEC are physically used in that termination.

Achievement of competition in the local exchange requires that intercarrier pricing of terminating compensation be symmetrical.

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COMMENTS OF CITIZENS UTILITIES COMPANY ON THE INTERCONNECTION NOTICE OF PROPOSED RULEMAKING

Citizens Utilities Company, on behalf of itself and its telecommunications divisions and subsidiaries (hereinafter referred to, collectively, as the "Citizens Companies"), by its attorney, hereby submits its comments on the above-styled Notice of Proposed Rulemaking issued on April 19, 1996, initiating this proceeding (the "*NPRM*"), and shows as follows:

I. Introduction

I.A. The Citizens Companies

Citizens Utilities Company, through divisions and subsidiaries, provides telecommunications services, electric distribution, natural gas transmission and distribution and water and waste water treatment services to more than 1,600,000 customer connections in 20 states. The Citizens Companies' Telecommunications Sector provides local exchange telephone services in suburban and rural exchange areas in Arizona, California, Idaho, Montana, Nevada, New Mexico, New York, Oregon, Pennsylvania, Tennessee, Utah and West Virginia. In addition, Citizens Telecommunications Company, a Citizens subsidiary, provides interexchange services throughout the nation. Finally, another Citizens subsidiary, Electric Lightwave, Inc., provides competitive local exchange and

interexchange services in several Far Western states.

I.B. The Interest of the Citizens Companies in this Proceeding

The Citizens Companies support a procompetitive policy of opening local exchange markets, including those in which it provides local exchange services, to usher in robust competition. This policy is driven by the Citizens Companies' evolution from the dated industry division into local exchange and interexchange categories. Instead, the Citizens Companies' thrust is to meet burgeoning consumer demand for comprehensive, sophisticated telecommunications services at market-based prices. Eschewing the monopoly era thinking that "pigeon-holed" carriers into rigid local exchange and interexchange carrier classifications, the Citizens Companies are quickly moving to become integrated platform providers of a complete and changing array of telecommunications products. In the view of the Citizens Companies, achievement of this paradigm is fundamental in meeting customer demand in the new era heralded by the recent enactment of the Telecommunications Act of 1996. The market will no longer tolerate the old-fashioned regulatory paradigm that effectively forced customers to deal with multiple service providers to meet their total telecommunications needs.

The Citizens Companies come to this critical proceeding with a number of perspectives, driven by their mix of business interests. Through the process of extended internal debate, these interests and perspectives have been harmonized into a comprehensive whole. A large portion of the current business of the Citizens Companies is comprised of incumbent local exchange carrier (local exchange carriers are hereinafter referred to as "LECs") operations classified as "rural telephone company" operations under Section 3(47) of the Communications Act of 1934, as amended, 47

U.S.C. §153(47).[1/] Accordingly, the Citizens incumbent LECs are prospective providers of interconnection services within the purview of Section 251 of the Act, subject to the universal service-related implications of Section 251(f)(1)(A). Conversely, Citizens Telecommunications Company, the interexchange carrier subsidiary of Citizens Utilities Company, is expanding into competitive LEC services in several areas. Both Citizens Telecommunications Company and its sister competitive LEC, Electric Lightwave, Inc., are consumers and providers of interconnection services.

The Citizens Companies' vision of affording a seamless array of telecommunications services to an increasingly sophisticated customer base is, in large measure, dependent upon proper state and federal reconciliation of regulatory obligations under Sections 251, 252 and 254 of the Act. In crafting the interconnection rules that are vital to opening local exchange areas to competition, the Commission must be mindful that many parts of the nation are rural and expensive to serve. Focus must be given to the statutory relationship between the Section 251(c) "additional obligations of incumbent local exchange carriers," the Section 251(f)(1) rural telephone company exemption and the Section 254 universal service provisions. At least two important implications flow from this statutory relationship: (1) the states are in the best position to know local conditions in their areas, which suggests that the FCC focus on providing principle-driven guidelines rather than preemptive, "one size fits all" interconnection rules; and (2) proper resolution of universal service issues is vital to wide-spread implementation of the full Section 251(c) interconnection standards in rural telephone company service areas.

[1/] All references to the Communications Act of 1934, as amended, will hereinafter be to the "Act" and to specific sections of the Act. In order to avoid confusion, references to the Telecommunications Act of 1996 will hereinafter be to the "Telecommunications Act."

company service areas.

The Citizens Companies find little in the Telecommunications Act intended to protect any incumbent LEC from competition or its effects.[2/] Similarly, nothing in the Telecommunications Act suggests that new entrants are to be effectively subsidized by requiring that incumbent LECs provide interconnection and other services on a noncompensatory basis. The Telecommunications Act is animated by Congressional intent that, subject to competitively neutral rules, local exchanges be open to competition, tempered only by such practical considerations as impact upon rates for low-income individuals and in rural, high-cost and insular areas. The Section 251(f)(1) rural telephone company exemption is, in the view of the Citizens Companies, intended primarily to afford some measure of time for the resolution of universal service issues before application of 251(c) interconnection and related Section 252 pricing standards to rural telephone companies. Accordingly, the interconnection standards that Citizens Companies propose are the same standards that will apply to the Citizens Companies' incumbent LECs when state commissions make the necessary Section 251(f)(1)(B) findings. As both providers and consumers of interconnection services, the Citizens Companies' comments reflect what they believe to be a balanced, procompetitive perspective.

II. Provisions of Section 251

II.A. Scope of the Commission's Regulations

Permeating the *NPRM* is a fundamental and unavoidable issue -- what are the relative roles

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[2/] The Section 251(f)(1) "exemption for certain rural telephone companies" is limited in scope to the strictest level of interconnection requirements contained in Section 251(c) and do not protect affected carriers from competition, *per se*. The Sections 251(a) and (b) interconnection requirements apply to such carriers. The Section 251(f)(2) power of the states to suspend and modify all of the Section 251 interconnection requirements for qualifying carriers will, in all probability, be granted only to the smallest incumbent LECs in isolated areas of the country.

of intercarrier negotiations and of the FCC and the states in implementing Section 251 of the Act? Section 252 emphasizes intercarrier negotiation of interconnection relationships, a sound proposition because carriers are presumably in the best position to know what they need and what they can provide. The direction from Congress to the FCC is that, "[w]ithin 6 months after the date of enactment . . . the Commission shall complete all actions necessary to establish regulations to implement the requirements of [Section 251]."[3/] On the other hand, the Telecommunications Act grants substantial power to the states in interconnection-related matters, not the least of which is the power to arbitrate disputed interconnection issues under Section 252. The Citizens Companies believe that accommodation of the emphasis upon negotiated interconnection arrangements and the bi-jurisdictional approach to local exchange competition mandated by Congress requires the FCC to establish minimum interconnection standards under Section 251. Further, the Commission's rules should be sufficient in scope and detail to equalize bargaining power between incumbent LECs and new entrants. However, any attempt by the FCC to anticipate and resolve, at least in theory, all interconnection issues through sweeping, unnecessarily preemptive rules would vitiate the statutory encouragement of intercarrier negotiations. Moreover, such an effort is both doomed to failure and irreconcilably in conflict with the powers and obligations of the states. Conversely, too "minimalist" an approach to implementation rules could lead to conflicting state results on core principles in arbitrating disputed interconnection issues.

The Citizens Companies' comments on specific interconnection issues embrace the principle of achieving balance between the FCC's quasi-legislative powers under Section 251(d)(1), Section

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[3/] Section 251(d)(1) of the Act.

252's emphasis upon intercarrier negotiations and state quasi-judicial powers under Section 252. In light of the expertise of competitors in negotiating interconnection arrangements, each state's knowledge and first-hand experience in dealing with local conditions and the experience of many states in grappling with interconnection issues long before FCC involvement, the FCC's rules promulgated in this proceeding should be those necessary to ensure uniformity in fundamental interconnection principles and to equalize bargaining power. The FCC cannot and should not attempt to address in its rules every possible nuance that may arise in complex interconnection matters.

II.B. Obligations Imposed by Section 251(c) on Incumbent LECs

II.B.1. Duty to Negotiate in Good Faith

FCC rules attempting to define good faith negotiation under Section 251(c)(1) are unnecessary. The failure to negotiate in good faith, as defined in Section 252(b)(5), sets the necessary standard. Application of this standard deals with issues of fact that can only be adjudicated on a case-by-case basis.

II.B.2. Interconnection, Collocation and Unbundled Elements

II.B.2.a. Interconnection

An aspect of the *NPRM* requiring close scrutiny is the tentative conclusion that, "uniform interconnection rules would facilitate entry by competitors in multiple states by removing the need to comply with a multiplicity of state variations in technical and procedural requirements."[4/] Great caution should be taken in framing the scope and breadth of such rules. First, already complex and quickly changing technical developments in telecommunications technology doom to virtual

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[4/] *NPRM* at ¶ 50.

impossibility any effort to create all-encompassing rules. Communications law is rife with examples of regulation trailing technology. The strong emphasis upon intercarrier negotiations embraced by Section 252 implicitly recognizes that industry players, rather than regulators, are in the best position to determine what they need and what they can provide. Second, an FCC effort to craft extremely detailed rules might limit the states' assigned role in arbitrating interconnection disputes. Just as the creation of law by legislation is supplemented by the creation of law through adjudication of actual cases and controversies, the states should be provided with overall guidance on interconnection issues and left free to create "common law" through the arbitration process. This framework should be in the form of basic principles dealing with core interconnection issues, with the interstices filled in the negotiation and, to the extent necessary, the state arbitration process.

Comment is also sought on the relationship between the Section 251(b)(5) obligation of all local exchange carriers to "establish reciprocal compensation arrangements for the transport and termination of telecommunications" and the Section 251(c)(2) obligation of incumbent LECs to provide interconnection.[5/] Upon a close reading of the two statutory provisions, it is clear that no ambiguity or conflict exists.

Section 251(b)(5) discusses a service -- the transport and delivery of traffic originated by another carrier upon the terminating carrier's network. In contrast, Section 251(c)(2) addresses the physical interconnection of the "facilities and equipment" of another telecommunications carrier,

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[5/] *Id.* at ¶ 53. The question not addressed is the relationship between incumbent LECs' Section 251(c)(2) interconnection obligations and the Section 251(a) general obligation of telecommunications carriers not subject to Section 251(c)'s requirements. The Citizens Companies believe that the obligation of the latter group of carriers is to exchange traffic with other carriers and not to impede network interoperability.

literally where one carrier's facilities and equipment meet those of another carrier.[6/] A clear distinction exists between the transport and termination services contemplated by Section 251(b) and the physical facility and equipment links between two networks contemplated by Section 251(c)(2). This "service" versus "physical facilities" dichotomy is also found in the Section 252(d)(1) interconnection pricing standard, which refers to a "just and reasonable rate for the interconnection of facilities and equipment," and the service-oriented Section 252(d)(2) dealing with charging for the transport and termination of traffic.

The Citizens Companies believe that a clear, unambiguous delineation exists between Section 251(b)(5) transport and termination requirements and the Section 251(c)(2) physical interconnection requirement. There is no overlap between the two provisions or in the related Section 252(d) pricing standards.

II.B.2.a.1. Technically Feasible Points

Section 251(c)(2)(B) requires an incumbent LEC to provide interconnection "at any technically feasible point" in its network. Conspicuously missing from the statutory language is any guidance on what is meant by technical feasibility, and the Citizens Companies doubt that any concrete definition can even be developed. Because interconnecting parties are in the best position to know their technical requirements and abilities, the primary emphasis in forging physical interconnection arrangements should be upon the negotiation process. Closely related to the technical feasibility of interconnection arrangements is the issue of structuring "meet points" for the exchange

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[6/] *See, also,* Section 251(a)(1), which creates the general obligation of all telecommunications carriers "to interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers [emphasis added]."

of traffic between interconnecting carriers. The location of meet points is an economic and network efficiency issue between interconnecting carriers best left, in the first instance, to the negotiation process. The interrelationship of physical interconnection and meet point economics is not uniform in the telecommunications industry and resulting issues cannot be fully addressed in the rulemaking process.

What can be captured in rules are core principles that serve to give some measure of bargaining equality to all interconnecting parties In this regard, the tentative conclusions contained in paragraph 57 of the *NPRM,* with a slight change, serve as the basis for a rule that enhances the negotiation process with core principles of uniform application. A preferred rule, based upon the paragraph 57 tentative conclusions, is as follows:

> (1) an incumbent LEC's past or present provision of interconnection to any other carrier at a particular network point will be deemed technically feasible and must be provided to any other carrier requesting interconnection at that point; and
>
> (2) when any other incumbent LEC uses network technology similar to that of an incumbent LEC in (1), above, it is presumed that interconnection is technically feasible at network points comparable to those where interconnection is, or has been, provided by an incumbent LEC in (1), above.[7]

The Citizens Companies' proposed change to the *NPRM's* paragraph 57 tentative conclusion deals with the case of an incumbent LEC not already providing interconnection at a particular point in its network, but which uses network technology similar to that of an incumbent LEC already providing interconnection at that point in its network The Citizens Companies' suggestion in this regard is creation of a rebuttable presumption of technical feasibility of interconnection at such points

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[7] The same standard of technical feasibility should apply in Section 251(c)(3) analysis of unbundled access to incumbent LEC network elements

in the network by incumbent carriers using similar technology, rather than an outright requirement that such interconnection be required at such points The fact that two incumbent LECs use similar technology does not mean that the two networks are necessarily identical and capable of technically supporting the same interconnection arrangements. By creating a presumption of technical feasibility, an incumbent LEC claiming to the contrary, with the exception of those qualifying for the rural telephone company exemption, has the burden of proof The Citizens Companies can endorse a rule presuming technical feasibility of interconnection at the trunk- and loop-side of (i) local switches, (ii) transport facilities, (iii) tandem facilities, and (iv) signal transfer points, by all incumbent LECs that use technology similar to that of local exchange carriers currently offering interconnection at such points.

The Commission should focus on creating baseline rules of the type just discussed and, in addition, on creating process rules for the conduct of intercarrier negotiation. For example, a critical process rule is to define what constitutes a "request for interconnection, services or network elements pursuant to section 251" sufficient in scope to trigger the formal negotiation process contemplated by Section 252.[8/] In order to avoid frivolous requests and pointless litigation over what constitutes such a request, the Commission should promulgate a definition requiring, at a minimum, that such a request be in writing and specifically designate the desired technical interconnection arrangement, including points of interconnection, to the extent possible. Further, specific timetables should be created for incumbent LEC processing of such requests, including timetables for making requests for additional information and responses thereto; for formal responses, in writing, to such requests; and,

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[8/] The same definition could be used for a "*bona fide* request" under Section 251(f)(1)(A).

perhaps most importantly, for the provisioning of interconnection arrangements. Process rules should also contain provisions that penalize an incumbent LEC for failure or refusal to meet reasonable due dates for providing interconnection arrangements

II.B.2.a.2. Just, Reasonable and Nondiscriminatory Interconnection

Whether an interconnection arrangement is just, reasonable and nondiscriminatory is primarily a question of fact best left to the Section 252 state arbitration and agreement approval process. No Commission rule, other than codifying Section 252(c)(2)(D), appears necessary.

II.B.2.a.3 Interconnection that is Equal in Quality

Whether an interconnection arrangement is equal in quality to that provided by an incumbent local exchange carrier to itself or to any subsidiary, affiliate or any other party is a question of fact best left to the Section 252 state arbitration and agreement approval process. No Commission rule, other than codifying Section 252(c)(2)(C), appears necessary.

II.B.2.a.4. Relationship Between Interconnection and Other Obligations Under the Telecommunications Act

The Citizens Companies agree with the tentative conclusion that the Commission has the authority to require, in addition to physical collocation, virtual collocation and meet point interconnection arrangements, as well as any other reasonable method of interconnection.[9/]

II.B.2.b. Collocation

The Citizens Companies recommend that the commission re-adopt its physical and virtual

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[9/] *NPRM* at ¶ 64.

collocation standards established in the *Expanded Interconnection* proceeding.[10/]

II.B.2.c. Unbundled Network Elements

In light of Section 252's emphasis upon intercarrier negotiations as a primary mode of forging interconnection relationships and the variety of network elements and arrangements that competitors need, the Citizens Companies wholeheartedly endorse the tentative conclusion that the Commission should,

> identify a minimum set of network elements that incumbent LECs must unbundle for any requesting telecommunications carrier and, to the extent necessary, establish additional or different unbundling requirements in the future as services, technology, and the needs of competing carriers evolve [11/]

Consistent with the foregoing tentative conclusion and Section 251(d)(3)'s reservation of the state's rights to implement nonconflicting interconnection arrangements, FCC preemption is not justified. The Commission should make no effort to preempt the states on network unbundling issues unless and until a state, through action or inaction, creates a conflict with national policy, as manifest in the Telecommunications Act or the Commission's minimum unbundling standards.

II.B.2.c.1. Network Elements

Section 3(45) of the Act makes a conceptual distinction between a "facility or equipment used in the provision of a telecommunications service," and a telecommunications service itself. Similarly, the Act Section 3(51) definition of "telecommunications service" specifically divorces a

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[10/] *See Special Access Interconnection Order*, 7 FCC Rcd 7369 (1992); *Special Access Physical Collocation Designation Order, 8 FCC Rcd 6909*; *Virtual Collocation Expanded Interconnection Order*, 9 FCC Rcd 5154; and *Virtual Collocation Designation Order*, 10 FCC Rcd 1116.

[11/] *NPRM* at ¶ 77

service from underlying facilities. Using this definition-driven dichotomy, the conclusion is inescapable that the purchaser of a network element is entitled to use that element in the transmission and routing of both telephone exchange service and exchange access.[12/] Whether a carrier provides both telephone exchange service and exchange access or provides one to the exclusion of the other is not a matter of regulatory concern. In any event, an effort to require that a carrier provide both is unenforceable, if even lawful.[13/]

The Citizens Companies do not read Sections 251(c)(3) and (c)(4) to preclude a carrier from purchasing cost-based unbundled elements and assembling them into a whole in order to "resell" the services of an incumbent LEC. Cost-based pricing of the piece parts, when assembled into an end-to-end service, can be a tool to drive down the retail pricing of a given service toward the level of cost if the retail pricing is significantly above cost. Logically, if a competitor can underprice an incumbent through exclusive use of its own network, through use of its network as supplemented by incumbent network elements or wholly through use of incumbent network elements, the result will be identical -- driving incumbent retail pricing toward cost.

No clear nexus can or should be drawn between the Section 251(c)(3) and (4) unbundled access and resale obligations, respectively, of incumbent LECs, other than the fact that both are available as tools to new entrants. A new entrant's decision of which, if not both, approaches to pursue is a purely economic one -- each approach has its own benefits and flaws and its own Section

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[12/] *See* Section 251(c)(2)(a).

[13/] The Citizens Companies recognize that, at least for some period of time until access reform and universal service issues are fully resolved, different intercarrier compensation schemes for each type of jurisdictional traffic traversing a physical interconnection arrangement will continue.

252 pricing mandate. Clearly, however, cost-based network unbundling has unique virtues, particularly the incentive for facilities investment by new entrants, that should not be hindered by an effort to tie incumbent LEC network element pricing to its retail service pricing.

A new entrant's ability to differentiate its offerings from those of an incumbent LEC dictates the opportunity, afforded by the ability to purchase cost-based, unbundled network elements, to design local products and to define unique local calling areas, enhanced features, and pricing plans. Little product differentiation of a competitor's offerings from those of the incumbent LEC is possible when the competitor is reselling incumbent LEC products. Section 251(c)(3), in conjunction with the cost-based pricing principle of Section 252(d)(1), is designed to allow such product development and differentiation. The statutory network element access and unbundling provisions, coupled with the statutory pricing mandate, compel the conclusion that cost-based access to underlying network functions is a tool to sever the service decisions of the new entrant from those of the incumbent. The critical purpose of the statutory imperative to unbundle network elements cannot and should not be undermined by attempting to draw a pricing relationship with bundled retail offerings and wholesale/resale pricing. Network element unbundling should function to afford every carrier the ability to design its own services, constrained only by its own imagination and the inherent capability of the network.

II.B.2.c.2. Access to Network Elements

The technical feasibility of an unbundling request involves, in significant measure, issues of fact that may vary widely with each unbundling request Critical issues that must be examined in each unbundling request are (i) the practical question of whether the arrangement be provided without

threatening network reliability; and (ii) the availability of necessary systems support, billing and other services necessary to the provision of access to network elements. Each issue requires case-by-case analysis that should be governed by the same technical feasibility standards discussed in Section II. B.2.a.1. of these comments, *supra*.

Based upon its experience in both local exchange and competitive local exchange operations, the Citizens Companies believe the following list should. subject to the technical feasibility standards discussed in Section II. B.2.a.1 of these comments, *supra*, constitute the minimum level of required network unbundling:

- 2 and 4 wire local loops, as a whole, and 2 and 4 wire loop distribution facilities, loop concentration plant, and loop feeder plant;
- building riser cable owned or controlled by the incumbent LEC;
- tandem and end office switching;
- dedicated and common transport links;
- operator services, including busy line verification and interrupt;
- 911/E-911 facilities and services, including selective call routing;
- access to databases, including directory assistance, 911/E-911, LIDB and CMDS;
- directory listings in incumbent LEC-affiliate directories; and
- signaling links, signal transfer points and service control points

II.B.2.d. Pricing of Interconnection, Collocation, and Unbundled Network Elements

II.B.2.d.1. Commission Authority to Set Pricing Principles

The Citizens Companies support as correct the conclusion that the Commission rules required

by statute should establish national pricing principles for the states to apply in rate arbitrations and in reviewing Bell Operating Companies statements of generally available terms and conditions. National pricing principles will be vital in achieving a consistent approach and results in interconnection pricing issues.

II.B.2.d.2. Statutory Language

The interpretation of Section 252(d)(1) will, in all probability, be one of the most contentious issues in this proceeding. Great wisdom is required in resolving, in the absence of concrete Congressional guidance, two key issues: (1) what is the cost standard to be applied in incumbent LEC pricing of interconnection of facilities and equipment and unbundled network elements; [14/] and (2) what was the Congressional intent in stating that interconnection and network elements "may include a reasonable profit?"

As discussed below, the Citizens Companies take what they perceive to be a middle ground position on the Section 252(d)(1) pricing issue They believe that this statutory provision, in specifying that interconnection and network element pricing may include a reasonable profit, makes it inappropriate for regulators to require that incumbent LECs provide services at directly attributable economic cost without allowing recovery of some measure of shared and common costs. Conversely, it is obvious that Congress, in crafting the Section 251(d)(1)(A) proscription against reference to rate-of-return or other rate-based proceedings, did not intend that interconnection and network element costing become the repository for costs shifted from more competitive services. The balance between

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[14/] The Citizens Companies agree with the tentative conclusion, in paragraph 122 of the *NPRM*, that the same pricing rule applies to both interconnection and unbundled network elements. It may also be appropriate to apply that pricing rule to Section 251(c)(6) collocation, which, in the view of the Citizens Companies, is one form of physical interconnection.

these two extremes must be found by state application of Commission general principles in specific arbitration proceedings.

A reasonable construction of Section 252(d)(1)(B) is that it memorializes that most fundamental of capitalist principles -- that every service provider, even those in markets that are not fully competitive, is in business to earn profits Under this construction, the fact that a proposed interconnection or network element rate includes a profit element does not render the proposed rate unreasonable, *per se*. The question of whether the profit is reasonable will be a question of fact to be resolved, where necessary, in arbitration proceedings. Further, in light of the Section 252(d)(1)(A) proscription against use of rate-of-return or other rate-based principles, earning this profit is clearly not a certainty.

II.B.2.d.3. Rate Levels

The Commission must be concerned, as it considers policies to foster a more competitive telecommunications market structure, with adopting a framework that allows market forces, rather than factors unrelated to the actual relative efficiencies of firms, to determine success in contested markets. Congress has not empowered the Commission to pick winners (other than the consuming public) and losers in the new marketplace. The goal of economic efficiency, rather than regulatory handicapping, is the correct driver of Commission action in this proceeding.

Interconnection pricing is critical to efficient investment decisions. The Commission must correctly set basic interconnection pricing principles However, finding the correct pricing structure, which will almost certainly differ from situation to situation, will be complex. Pricing can, however, continue to be refined through market-driven negotiation processes, with regulators playing a role

if negotiation breaks down.

The *NPRM*, in paragraphs 123 through 148, discusses and proposes various pricing and cost standards that might be used to evaluate rate levels for interconnection and unbundled network elements. The use of LRIC (long run incremental cost) and TSLRIC (total service LRIC) methods for pricing are discussed at length.[15/] Two particular and critical points of conflict associated with the use of LRIC/TSLRIC methods are identified: (1) the use of TSLRIC pricing for all services will not cover all of a firm's forward looking costs, such as shared and common costs; and (2) if rates are to be set above TSLRIC, regulators face the challenges inherent in allocating shared and common costs of the firm.[16/] The resolution of the conflict between the two pricing alternatives is quite subjective.

The appropriate standard for determining the costs of interconnection is the same as that for any service provided by a regulated firm -- TSLRIC. All prices in a competitive pricing structure must be derived from the market forces of supply and demand. Aligning all prices to recover at least TSLRIC avoids cross-subsidization among customers, reduces reliance on arbitrary class of service and rate group characterizations, achieves equity, promotes price stability, and allows carriers and consumers greater flexibility in responding to competitive alternatives. In fact, it may allow competitors to develop creative alternatives to those of incumbent LECs.

[15/] The Commission appears to use the terms LRIC and TSLRIC almost interchangeably. The Citizens Companies distinguish between the terms LRIC and TSLRIC in that the additional quantities of a service for which the cost is being estimated differ between the two. As the FCC describes LRIC in paragraph 126, the use of the word "increment" is not clear; it could be the entirety of output of the service, the next 50 or the first 500 units of output. However, use of the different increments of output will result in startlingly different measures of cost. TSLRIC, a more appropriate standard, refers to the incremental cost of providing the entire output of a service at a given level of demand for the service, not just the next 50 units.

[16/] *NPRM* at ¶¶ 129 and 130.